

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 486 of 2004 (O&M)
Date of Decision : 09.12.2015

Asha Rani and others

....Appellants

Versus

Mohan Lal and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. A.K. Chopra, Senior Advocate
with Mr. G.B. Bhandal, Advocate
for appellants no. 1 and 2.

Mr. Sumeet Mahajan, Senior Advocate with
Mr. Amit Kohar, Advocate
for appellant no. 3.

Mr. V.K. Jain, Sr. Advocate with
Mr. J.L. Malhotra, Advocate
Mr. Ravi Kadian, Advocate and
Mr. C.B. Goel, Advocate
for respondent no. 1.

Surinder Gupta, J.

This is a Regular Second Appeal against judgment and decree passed by the Courts below whereby suit filed by Mohan Lal-respondent no. 1 seeking possession through partition of the property, as mentioned below, was decreed:-

“(i) *One house which consists of two shops, two rooms, stair, verandah on the ground floor and residential house on the upper storey situated near old Hospital Machhiwara Mohalla Gamey Shah Saidian Ward No. 7, shown as red in the rough sketch site plan and bounded as under:-*

<i>North</i>	<i>:</i>	<i>House of Parshotam Dass</i>
<i>South</i>	<i>:</i>	<i>Shop of Prem Singh</i>
<i>East</i>	<i>:</i>	<i>Road</i>
<i>West</i>	<i>:</i>	<i>House of Gobind Ram etc.</i>

(ii) *One godown which is having Atta Chakki, Kohlu*

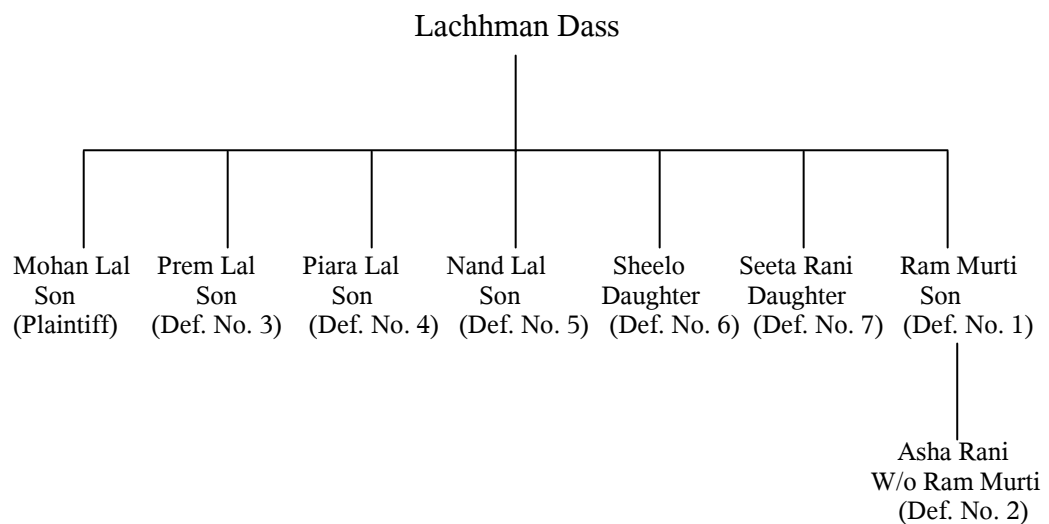
Cotton Ginning, Kharad which has been shown as red in the rough sketch plan including mini rice-sheller bounded as under:-

North : Street
South : Plot of Ram Murti
East : House of Sunder Dass
West : Road

Situated in Ward No. 7, near old Hospital Mohalla Gamey Shah Saidian by way of partition on the basis of registered and valid Will dated 09.06.1981.”

2. In later part of the judgment the parties will be referred as ‘plaintiff’ and ‘defendants’ as per civil suit.

3. The case of plaintiff-Mohan Lal (respondent no. 1) is based on the Will of his father dated 09.06.1981. Before proceeding further following pedigree table will help in understanding the relationship of parties:-



4. The case of plaintiff, in brief, is that Lachhman Dass was owner of the suit property alongwith other properties. During his life time he partitioned his properties and gave suit property to the plaintiff and defendants equally. He also executed a legal and valid Will dated 09.06.1981 vide which he gave property in question to the plaintiff and defendants equally. The plaintiff and defendants

constructed house jointly and started living therein but did not partition the property by metes and bounds. Defendant no. 1 executed a gift deed of a house and shop in favour of his wife Asha Rani-defendant no. 2, which was illegal, fictitious and not binding on the right of plaintiff as defendant no. 1 has no right, title or interest to execute the same.

5. The contest in this suit was only between the plaintiff, his brother Ram Murti-defendant no. 1 and Asha Rani-defendant no. 2 wife of Ram Murti. The plaintiff has specifically pleaded that defendants no. 3 to 7 have no right and interest in the suit property and they were impleaded as party only being sons and daughters of Lachhman Dass.

6. Defendants no. 3 to 7 in their separate written statement contested the claim of plaintiff to the extent of his title over the suit property. It was pleaded that suit property was owned by Lachhman Dass who had executed a valid Will dated 06.07.1984 bequeathing the suit property in favour of his sons except plaintiff.

7. Defendant no. 1 in his separate written statement took the preliminary objection that suit was bad for seeking partial partition. It was not properly valued for the purpose of court fee and jurisdiction. It was alleged that Will dated 09.06.1981 on the basis of which plaintiff has filed the instant suit was revoked by Lachhman Dass vide his registered Will dated 06.07.1984. Under the Will dated 06.07.1984, Ram Murti-defendant no. 1 has become absolute owner of suit property and then transferred the same through gift deed to his wife Asha Rani-defendant no. 2. Plaintiff had been admitting Will dated 06.07.1984 to be correct and all the

legal heirs acted upon this Will. As per this Will *karkhana* (factory) on Kohara Road was given to Prem Lal and Piara Lal. House No. 757 (old) in Ward No. 8 adjacent to the house of Bal Kishan was given to Ram Murti-defendant no. 1 and Nand Lal-defendant no. 5. Ram Murti sold his share in the house to one Chander Mohan who is in possession of the same. Plaintiff was given one property which was purchased from Gurdev Singh on which one *karkhana* was constructed by Lachhman Dass after spending huge amount from his own pocket. This *karkhana* situated on Gurudwara Charan Kanwal Road is occupied by plaintiff. The Will of 1984 was given effect in the record of Municipal Committee. The reason for filing instant suit was that plaintiff was trying to disturb the possession of one plot over which two shops had been constructed. Sandeep Kumar son of Ram Murti-defendant no. 1, owner of that property, filed a suit against the plaintiff and as a counterblast the instant suit was filed. All the other averments of plaintiff were contested and controverted.

8. Asha Rani-defendant no. 2 filed separate written statement claiming her title over the suit property under gift deed dated 19.08.1997 and in the alternative claimed title by way of adverse possession. She also took the plea that Will dated 09.06.1981 was revoked vide Will dated 06.07.1984.

9. The pleadings of parties led to framing of the issues as follows:-

- (i) Whether the plaintiff is entitled to possession by way of partition? OPP
- (ii) Whether Lachhman Dass deceased executed a valid Will dated 09.06.1981? OPP

- (iii) Whether the gift deed dated 19.08.1997 in favour of Smt. Asha Rani, defendant no. 2 by defendant no. 1 is fictitious, illegal and not binding on the plaintiff? OPP
- (iv) Whether the suit for partial partition is maintainable? OPP
- (v) Whether the suit is properly valued for the purpose of court fee and jurisdiction? OPP
- (vi) Whether the suit is bad for non-joinder of necessary party? OPD
- (vii) Whether Lachhman Dass deceased executed legal and valid Will dated 06.07.1984? OPD
- (viii) Whether the suit is within limitation? OPP
- (ix) Whether the defendants became the owner of the suit property by way of adverse possession? OPD
- (x) Relief.

10. The bone of contention in this case revolves around two registered Wills dated 09.06.1981 and 06.07.1984 of Lachhman Dass. Learned Civil Judge (Junior Division), Samrala held Will dated 09.06.1981 as duly proved, though, no specific finding regarding the proof of execution of Will dated 06.07.1984 was recorded by learned Civil Judge (Junior Division). It appears from the tone and tenor of judgment that learned Civil Judge was of the view that the Will was duly proved by examination of one of the marginal witness and deed writer who identified the writing of scribe of the Will. It also noticed two common factors in Wills dated 09.06.1981 and 06.07.1984 that (i) both the Wills were scribed by same deed writer Anand Saroop Aggarwal; and (ii) Teja Singh, *Nambardar* had signed both the Wills as marginal witness.

11. Will dated 06.07.1984 was discarded on the ground that despite having same scribe and same marginal witness it was not

mentioned in the later Will dated 06.07.1984 that Lachhman Dass had executed earlier Will dated 09.06.1981 and that Will was revoked rather Will dated 06.07.1984 was described as first and last Will of Lachhman Dass. Secondly Lachhman Dass had given share in his property to all his five sons as per Will dated 09.06.1981 but vide Will dated 06.07.1984, four sons were given the share but Mohan Lal was excluded on the ground that Lachhman Dass had installed *karkhana* on the land purchased from Gurdev Singh on Gurudwara Charan Kanwal and Sherpur Road by spending money from his pocket and this recital was not found plausible as the land on which *karkhana* was constructed was purchased by Mohan Lal and it was never the ownership of Lachhman Dass. The reason as given in Will dated 06.07.1984 excluding Mohan Lal from inheritance of the property of Lachhman Dass did not find favour with the learned trial Judge.

12. Another factor which weighed in the mind of learned trial Judge was that Will dated 06.07.1984 was not the result of free will and sound disposing mind of Lachhman Dass. The above opinion was based on the ground that Lachhman Dass was living with Ram Murti-defendant no. 1 at the time of his death. Ram Murti-defendant no. 1 exercised his position to his advantage for exclusion of Mohan Lal from inheritance of the property owned by Lachhman Dass.

13. Plea of Asha Rani-defendant no. 2 that she has also become owner of suit property by way of adverse possession was also discarded. Gift deed dated 19.08.1997 executed by Ram Murti-defendant no. 1 in favour of Asha Rani-defendant no. 2 was set

aside to the extent of share of plaintiff in suit property and Will dated 06.07.1984 was held as illegal, null and void.

14. Similar view prevailed with the Ist Appellate Court except observation of lower Court that Will was not executed by Lachhman Dass with his free will and he was not in sound disposing mind. Learned Ist Appellate Court also took note of the fact that in Will dated 06.07.1984 no reference was made to earlier Will dated 09.06.1981 and there were no special circumstances for Lachhman Dass to execute the second Will. It observed that Lachhman Dass wanted to avoid any dispute regarding his property after his death and settled the same by way of partition of his property during his life time and ratified the same by executing Will dated 09.06.1981. In the second Will he had given property to his four sons. The reason for excluding Mohan Lal was not tenable, as such, there was no occasion for Lachhman Dass to execute the second Will dated 06.07.1984. Ist Appellate Court also rejected the plea of Asha Rani-defendant no. 2 that she has also become owner of suit property by way of adverse possession.

15. I have heard learned counsel for the parties, perused the lower Court record and judgments of the Courts below with their assistance.

16. Learned counsel for the appellants has argued that both the Wills of Lachhman Dass are registered Wills, scribed by same deed writer and one of the marginal witness was also same. Lachhman Dass died on 28.06.1985. After his death the parties settled their claim regarding possession and ownership of the property left by Lachhman Dass and entries in the Municipal

records were also made. A dispute arose between plaintiff and Sandeep Kumar son of defendant no. 1-Ram Murti in the year 1997 pertaining to the property situated on Gurudwara Charan Kanwal-Sherpur road. Sandeep Kumar filed suit against Mohan Lal-plaintiff seeking relief of injunction based on the cause of action dated 22.10.1997. It was at this stage that Mohan Lal came up with the instant suit filed on 27.10.1997. It is evident that he had limited dispute only with Ram Murti-defendant no. 1 and the suit was filed only against him. It was at later stage on the objection of Ram Murti that other sons and daughters of Lachhman Dass were impleaded as party.

17. Both the Courts below were convinced about execution of Will dated 06.07.1984 but have ignored the said Will on flimsy grounds that there is no reference of earlier Will therein and secondly that the reasons given for excluding Mohan Lal from inheriting the property of Lachhman Dass were not tenable. The Courts below have failed to understand the psyche of Lachhman Dass who had well settled his sons. He had not left any of his son on road. For plaintiff-Mohan Lal, he had purchased property and set up a *karkhana*, though in his (Mohan Lal's) name, and feeling satisfied that Mohan Lal-plaintiff was well settled he gave his entire remaining property to his four sons excluding the daughters. Even if for the sake of argument it be believed that the land over which Mohan Lal-plaintiff is having a *karkhana* was purchased by Mohan Lal and he had also installed *karkhana* from his own funds still this could be the reason for the father to exclude him from inheritance of his properties. It is beyond the domain of Courts to comment

upon the reasons that have prevailed in the mind of executor of the Will. Non-mentioning of Will of 1981 in the second Will of 1984 was a human error. He had depended on the same scribe who had scribed earlier will. The second Will was also duly got registered, as such, there is no suspicious circumstance against execution of the Will. Even otherwise, Mohan Lal-plaintiff vide receipt dated 25.07.1988, while getting ₹ 27,000/- towards his share in the shop jointly purchased by Lachhman Dass in the name of his sons Ram Murti, Nand Lal and plaintiff, had referred to Will dated 06.07.1984 and admitted the same as correct. This receipt could not be produced before the Court below and an application has been moved to produce the same by leading additional evidence.

18. Learned counsel for the appellants has further argued that though defendants no. 1 and 2 have stated in their written statements that Will of 1981 was revoked still the onus was heavily on the plaintiff to prove this Will by leading evidence in accordance with provisions of Sections 68 and 69 of the Indian Evidence Act. The original Will was not produced and no application to prove the same by way of secondary evidence was moved before the Court below and the Will was not duly proved.

19. Learned counsel for respondent no. 1-plaintiff has argued that the scribe and marginal witnesses of Will dated 09.06.1981 have already died. In order to prove the Will, plaintiff had examined deed writer who identified the handwriting of Anand Saroop Aggarwal who had scribed this Will. He had also examined Surat Singh PW-7, who is son of Niranjan Singh a marginal witness of Will dated 09.06.1981. He had identified the signatures of his

father and the Courts below have rightly held that Will dated 09.06.1981 was duly proved. Even the case of defendants no. 1 and 2 is that vide Will dated 06.07.1984 earlier Will dated 09.06.1981 was revoked. The plaintiff called record from the office of Sub Registrar where second copy of the Will was retained and that copy bear the original signatures of party and marginal witnesses. The Will was duly produced and there was no necessity to seek permission to prove the Will by way of secondary evidence. Lachhman Dass in the last days of his life was living with his son Ram Murti-defendant no. 1. He had given reasons in Will dated 06.07.1984 while excluding plaintiff from inheritance that land was purchased in his name at Gurudwara Charan Kanwal Road where a *karkhana* was built by him and it was given to Mohan Lal. In fact that land was purchased by Mohan Lal himself and he had himself constructed *karkhana* over the said land. This shows falsity of averments in the Will and the Courts below have committed no error of law while discarding this Will being shrouded by suspicious circumstances. No substantial question of law requiring determination arises in this appeal. The conclusion drawn by the Courts below are based on evidence calling for no interference in this regular second appeal. Regarding the receipt sought to be proved by additional evidence, he has argued that the same could be produced before the Court below. It is a receipt of the year 1988 and the suit was filed in the year 1997. At this stage, permission as sought cannot be allowed.

20. As already discussed the controversy in this case revolves around two registered Wills dated 09.06.1981 and

06.07.1984 executed by Lachhman Dass. An interesting common factor about both the Wills is that these were scribed by same deed writer and one of the marginal witness on these Wills is also the same. Both the Wills were duly registered.

WILL DATED 09.06.1981

21. In order to prove Will dated 09.06.1981, plaintiff called the record from the office of Sub Registrar where the Will was registered and examined Sohan Lal as PW-5 who had identified the writing on Will dated 09.06.1981 by deed writer Anand Saroop Aggarwal. He had also identified writing of same deed writer on Will dated 06.07.1984. Both the marginal witnesses have died and the plaintiff examined Surat Singh PW-7 son of one of the marginal witness Niranjan Singh, who had identified writing of his father on the Will. Besides that Sub Registrar Ashok Kumar Sikka examined as PW-4 has stated that the Will was produced before him for registration. He read over the Will to Lachhman Dass who after admitting the same as correct signed over the endorsement on Will in his presence. Looking into the above evidence both the Courts below have committed no error of law and fact while reaching the conclusion that Will dated 09.06.1981 was duly proved.

WILL DATED 06.07.1984

22. The second Will dated 06.07.1984 is also a registered Will. Learned Civil Judge (Junior Division) took note of this fact that this Will had been scribed by the same deed writer who had scribed the earlier Will of 1981 and one of the marginal witness on both the Wills is also same. The Will was registered one and one of the marginal witness Laxmi Narain appeared and no flaw was

found in his statement. However, learned Civil Judge (Junior Division) refrained from recording the finding as to whether execution of Will dated 06.07.1984 was duly proved or not.

23. Learned Ist Appellate Court after appraisal of above evidence did not conclude that execution of the Will was not proved in accordance with law. However, both the Courts have ignored the Will with the observation that the same is not genuine and shrouded by suspicious circumstances.

SUBSTANTIAL QUESTION OF LAW

24. A substantial question of law which arises for consideration is whether finding of the Courts below discarding Will dated 06.07.1984 is based on proper appreciation of law and evidence and from the facts proved on file of the case it could be remotely inferred as shrouded by suspicious circumstances?

25. Before proceeding further it will be relevant to take note of the fact that scope of interference in the second appeal is very limited. However, both the Courts below have discarded Will dated 06.07.1984 giving the reasons which will be discussed in later part of the judgment. As to whether the reasons given by the Courts below were borne out from the record is a substantial question of law calling for re-appreciation of evidence in this appeal. Apex Court in case of **Major Singh vs. Rattan Singh (dead) by LRs, 1997 (3) SCC 546** has observed in somewhat similar circumstances as follows:-

“Learned counsel for the appellant has contended that the High Court could not interfere under Section 100, Civil Procedure Code since the suspicious features of the will are questions of facts. The trial Court and the appellate

Court had considered the suspicious feature and were not inclined to interfere. It is the duty of the propounder of the Will to establish that Will was validly executed removing all the suspicious features satisfying conscience of the Court. In that behalf, the high Court was not justified in interfering in the second appeal as there was no substantial question of law for decision under Section 100 CPC. It is seen that it is an admitted position that Rattan Singh, on coming to know that his brother was unwell, had gone from Calcutta to see him. After his coming, the Will came to be executed and the execution of the Will also was not disputed. The only question is: whether the Will came to be executed in the normal circumstances? The courts below relied heavily on two suspicious features, namely, the Will was not produced at the earliest point of time; it was produced sometime before the trial. Secondly, the attestators were disbelieved on two grounds, namely, that Hari Singh, one of the attestators had not disclosed that the Will was not executed when the mutation was effected in his presence. The High Court has explained that the mutation was not properly proved and that there was no reason to disbelieve that fact. The High Court had perused the original as well as the photocopy of the will produced in the trial Court in the first instance. The High Court has found that there is no interpolation in the original Will. Therefore, the rejection of the evidence of the attestator, Hari Singh's evidence was found to be not correct. As regards the other attestator-witness, by name Gurdev Singh, it was disbelieved on the ground that he filed a suit in a litigation against Jeet Singh. It was hardly a ground to disbelieve the evidence of the attestator's evidence. Under these circumstances, when the courts below had rejected and disbelieved the evidence on the ground that the propounder had not properly discharged his duty, it is the duty of the High Court to consider whether the reasons given by the courts below were

sustainable in law. In view of the above reasoning of the trial Court as affirmed by the appellate Court, necessarily the High Court requires to go into that question to test the reasons. In this perspective, the High Court has rightly gone into that question and found that the reasons given by the courts below are flimsy. Thus there is substantial question of law that has arisen for consideration and the High Court has rightly considered the question. We are entirely agree with the High Court.”

DISCUSSION

26. The suspicious circumstances on the basis of which Will dated 06.07.1984 was discarded could not be remotely inferred as suspicious circumstances arising from the evidence on record. Lachhman Dass appears to be a very intelligent person who was concerned about devolution of his property after his death. He not only executed the Will, got it scribed through a regular deed writer but also got it duly registered. Both the times he availed services of same deed writer in getting the Wills scribed. He never wanted any dispute amongst his children after his death concerning division of property left by him. As per circumstances prevailing in the year 1981 he executed Will dated 09.06.1981. He gave share in his estate to all his five sons including the plaintiff. Then he executed Will dated 06.07.1984. Before proceeding further first question which arises for consideration is as to whether execution of this Will is duly proved? This Will is also a registered Will. Defendants have complied with provisions of Section 68 of Indian Evidence Act in order to prove this Will – a fact not assailed by counsel for plaintiff-respondent no. 1. The Courts below have discarded this Will on the basis of suspicious circumstances as follows:-

- (i) There is no recital in Will dated 06.07.1984 about earlier Will or it is mentioned herein that earlier Will was revoked.
- (ii) The reasons given for excluding plaintiff-Mohan Lal from inheritance of the property of Lachhman Dass are not tenable.
- (iii) Learned trial Judge has also held that it was not executed by testator of his free will and Lachhman Dass was not in his sound disposing mind. (Though, there is no such plea or evidence that Lachhman Dass was not of sound disposing mind at the time of execution of the Will but the facts which appears to have prevailed before learned Civil Judge (Junior Division) was that Lachhman Dass was residing with Ram Murti-defendant no. 1 at the time of execution of Will.)
- (iv) Ist Appellate Court also raised a plea that there was no reason or occasion for Lachhman Dass to execute the second Will as he had already given separate shares to all his five sons.

27. Lachhman Dass was having five sons, namely; Prem Lal, Piara Lal, Nand Lal, Mohan Lal and Ram Murti. While executing Will dated 09.06.1981 he had given separate shares to all his sons as mentioned in the Will. In the second Will dated 06.07.1984 Lachhman Dass revised the distribution of his property by giving separate shares to his four sons. Regarding plaintiff-Mohan Lal he recited in the Will as follows:-

“Aur jo mera ladka Mohan Lal hai usko uske hisse ke mutabik maine apni gira (jeb) se rupeya kharch karke karkhana jagah Gurdev Singh se kharid kar ke barsadak Gurudwara Charan Kanwal Sahib aur Sherpur bana diya hai. Isliye is jayadad me se kuchh diya nahi javega.

(I have already constructed a karkhana by spending from my pocket for Mohan Lal as per his share by purchasing land from Gurdev Singh on Gurudwara Charan Kanwal Sahib and Sherpur Road. As such, he will not be given any share in my properties (mentioned above.)”

28. Admittedly, there is *Atta Chakki*, Oil Spiller, Saw Mill etc. in that factory (*karkhana*) at Charan Kanwal-Sherpur road. The sale deed of that land as per plaintiff-Mohan Lal was executed on 03.07.1981 i.e. after the Will dated 09.06.1981.

29. The question which arises for consideration is as to whether reasons given by Lachhman Dass for not giving any share in his property to plaintiff-Mohan Lal which find mention in the Will are not tenable? Lachhman Dass while executing Will dated 06.07.1984 appeared to be well convinced about financial status and settlement of Mohan Lal. He has stated that the land was purchased by him and a *karkhana* was set up on that land from his funds for Mohan Lal and he did not want to give any of his other property to him. Both the Courts below have discarded this reason mentioned in the Will on the ground that the land on which *karkhana* was constructed was in the name of Mohan Lal and there was no evidence that Lachhman Dass had spent money from his pocket for purchase of land and construction of *karkhana*. Once Will dated 06.07.1984 is proved, the recital therein is sufficient to believe the testimony of Lachhman Dass. When a father purchases something in the name of his son it is not required that other sons will keep documentary evidence of spending by the father. A very important factor in this case is that Lachhman Dass has not favoured any of his son. Moreover the plaintiff has also not proved

on record his means to purchase the plot at Charan Kanwal road and set up the *karkhana* to rebut the recital in Will. He executed the second Will bequeathing his property to his four sons, as such, there was no reason even to think of any undue pressure on the testator or to draw inference that the testament was not outcome of free will of Lachhman Dass.

30. Lachhman Dass has left behind five sons and two daughters and all the six except plaintiff are in unison about the execution of Will dated 06.07.1984 by Lachhman Dass. Even two sisters of plaintiff, who were not given any share in the property of Lachhman Dass either in the first Will or second Will, are refuting the claim of plaintiff on the basis of Will dated 06.07.1984 and admittedly they have no reason or grouse against the plaintiff. This rather shows their regard and honour for the last wish of their father.

31. Both the Courts below have given undue importance to the fact that in the second Will no mention was made regarding the first Will of 1981. Both the Wills were scribed by same deed writer. First Will of 1981 has been mentioned as first and last Will of Lachhman Dass and similar recital was made in the second Will. This may be due to the style and language used by deed writer, who scribed both the Wills. None of the party to Will dated 06.07.1984 was a legal luminary or was so legally cautious that he would have used a very well guarded legal language in the Will. Non-mentioning of first Will dated 09.06.1981 in second Will dated 06.07.1984 was just a human error and this is particularly so in view of the fact that Lachhman Dass availed services of same deed writer while

getting the second Will scribed from whom he had got written first Will. He also took with him Teja Singh, *Nambardar* who was also a marginal witness on the first Will. Under these circumstances, mere non-reference of first Will and the fact that he was revoking that Will eclipses into oblivion. The Will is depiction of state of mind of executor. The first Will of 1981 was executed by Lachhman Dass to avoid any controversy regarding distribution of his property after his death. He had not given any share to his daughters but they were satisfied. The second Will of 1984 was executed by him in view of development between 1981 till the date of execution of the second Will giving his entire property to his four sons after settling fifth son in life. It is not for the Court to comment upon the reason given by executant of the Will while favouring or ignoring his heirs. If a father finds that one of his son is well settled in comparison to others, may be because of his own ability or because of the support given to him, he may exclude him while conferring his estate on the other sons and daughters. Once execution of the Will is satisfactorily proved, the fact that executor bequeathed his property by leaving one of his son cannot make the Will invalid. Apex Court in case of **Smt. Sushila Devi vs. Pandit Krishna Kumar Missir and others**, (1971) 3 SCC 146 has observed as follows:-

“5. *Prima facie, the circumstance that no bequest was made to the appellant by the testator would make the will appear unnatural but if the execution of the will is satisfactorily proved, the fact that the testator had not bequeathed any property to one of his children cannot make the will invalid. If the bequest made in a will appears to be unnatural*

then the court has to scrutinize the evidence in support of the execution of the will with a greater degree of care than usual, because every person must be presumed to act in accordance with the normal human behavior but there is no gainsaying the fact that some individuals do behave in an abnormal manner. Judges cannot impose their own standard of behavior on those who execute wills.....”

32. Lachhman Dass executor of the Will was admittedly living with Ram Murti-defendant no. 1 but from this fact no inference can be drawn that Will dated 06.07.1984 was executed under his influence. Had Lachhman Dass been under the influence of Ram Murti he would have favoured him by giving the major chunk of his property to him or would have ignored all the other sons. Rather he gave property to his four sons excluding the plaintiff-Mohan Lal for the reasons recorded in the Will.

33. The purpose of execution of the Will is to deviate from the natural course of inheritance and if Lachhman Dass while executing Will dated 06.07.1984 has ignored plaintiff for the reasons mentioned in the Will it does not cast any cloud or raise any suspicious circumstance about execution of Will dated 06.07.1984 which is duly proved. The execution of second Will dated 06.07.1984 would automatically result in revocation of Will dated 09.06.1981.

34. The appellants have moved application to place on record as additional evidence the receipt executed by Mohan Lal on 25.07.1988 while receiving ₹ 27,000/- towards share in the shop jointly purchased by his father in the name of three sons. In that

writing he had made reference to Will dated 06.07.1984. As Will dated 06.07.1984 has been held to be duly executed, allowing of this application will not serve any purpose rather will cause further delay in disposal of the case, as such, this application is declined.

35. As a result of upholding the validity of Will dated 06.07.1984, no detail discussion about the plea of appellants that they have become owner of the suit property by way of adverse possession is required. Even otherwise, Ist Appellate Court dealt with this issue in detail and has rightly reached the conclusion that defendants no. 1 and 2 have not become owner of the suit property by way of adverse possession. Consequent upon my above discussion, the substantial question of law framed in this case is answered in favour of appellants.

36 This appeal has merits and is accepted. Findings of the Courts below on issue no. 1 and 7 are reversed and judgments and decrees passed by both the Courts below are set aside and the suit of the plaintiff is ordered to be dismissed with costs throughout.

December 09, 2015
jlk

(SURINDER GUPTA)
JUDGE

Whether to be referred to the Reporters? Yes/No